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Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
Houghton Lake Public Library	)	Application No. 52629
Houghton Lake, Michigan	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Changes to the Board of Directors	)	
of the National Exchange Carrier	)	CC Docket No. 97-21 ✓
Association, Inc.	)	
	)	

### ORDER

**Adopted: July 29, 1999**

**Released: July 29, 1999**

By the Common Carrier Bureau:

1. The Common Carrier Bureau has under consideration an appeal by Houghton Lake Public Library, Houghton Lake, Michigan (Houghton Lake) filed on April 30, 1999, seeking review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC or Administrator).<sup>1</sup> Houghton Lake seeks review of the SLD's denial of its application for discounts for telecommunications services under the schools and libraries universal service support mechanism.<sup>2</sup> For the reasons set forth below, we deny Houghton Lake's appeal and affirm the SLD's denial of Houghton Lake's application for discounts for telecommunications services.

### I. BACKGROUND

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.<sup>3</sup>

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<sup>1</sup> The Commission's rules provide that requests for review of decisions issued by the Universal Service Administrative Company (USAC or the Administrator) shall be considered and acted upon by the Common Carrier Bureau, provided, however, that requests for review that raise novel questions of fact, law, or policy shall be considered by the full Commission. 47 C.F.R. § 54.722(a). Houghton Lake does not raise novel questions of fact, law, or policy and therefore this matter will be acted upon by the Common Carrier Bureau.

<sup>2</sup> Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c).

<sup>3</sup> 47 C.F.R. §§ 54.502, 54.503.

The Commission's rules provide that, with one limited exception, an eligible school, library or consortium must seek competitive bids for all services eligible for support.<sup>4</sup> The Commission reasoned that competitive bidding would ensure fiscal responsibility and would be the best means for ensuring that eligible schools and libraries are able to receive services at the most competitive rates.<sup>5</sup>

3. To comply with this competitive bid requirement, the Commission's rules require that an applicant submit to the Administrator a completed FCC Form 470, in which the applicant lists the services for which it seeks discounts.<sup>6</sup> The Administrator must post the FCC Form 470 on its website and the applicant is required to wait 28 days before making a commitment with a selected service provider.<sup>7</sup> The rules also require that the Administrator send confirmation to each applicant that its FCC Form 470 has been received and posted (Receipt Acknowledgment Letter). After the FCC Form 470 has been posted for 28 days, and the applicant has selected a service provider, the applicant must submit to the Administrator an FCC Form 471, which lists the services that have been ordered.<sup>8</sup> If the Administrator has established a filing window, all FCC Form 471s submitted during the filing window will be treated as if they were simultaneously received.<sup>9</sup> For the first funding period, the filing window opened on January 30, 1998 and closed on April 15, 1998.

4. The Commission's rules provide a limited exemption from the 28-day competitive bid requirement for applicants that have "pre-existing contracts," as defined by the Commission's rules.<sup>10</sup> As described in the instructions for completing FCC Form 470,

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<sup>4</sup> 47 C.F.R. § 54.504.

<sup>5</sup> See *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, 9002 and 9133 at paras. 480 and 686 (1997) (*Universal Service Order*, as corrected by *Errata*, CC Docket No. 96-45 (rel. June 4, 1997), *appeal pending sub nom. Texas Office of Pub. Util. Counsel v. FCC*, No. 97-60421 (5th Cir. argued Dec. 1, 1998) (*Universal Service Order*).

<sup>6</sup> 47 C.F.R. §§54.504(b)(1), (b)(3). In submitting FCC Form 470, an applicant is required to provide only general information about the services for which it seeks discounts, e.g., number of phones that require service, number of dial-up connections necessary, as well as an assessment of the applicant's existing technology that may be necessary for the effective use of eligible services, e.g., number of computers.

<sup>7</sup> 47 C.F.R. §§ 54.504(b)(3) and (4); § 54.511.

<sup>8</sup> 47 C.F.R. § 54.504(c). A commitment of support is contingent upon the filing of FCC Form 471.

<sup>9</sup> 47 C.F.R. § 54.507(c).

<sup>10</sup> A signed contract between an eligible school, library, or consortium for services eligible for discounts under the schools and libraries universal service support mechanism is exempt from the Commission's competitive bidding requirements as follows: (1) a contract signed on or before July 10, 1997 is exempt from the competitive bid requirements for the life of the contract; and (2) a contract signed after July 10, 1997, but before the date on which the universal service competitive bid system became operational, i.e., January 30, 1998, is exempt from the competitive bid requirements only with respect to services that are provided under such contract for the first funding period. 47 C.F.R. §§ 54.511(c)(1)(i) and (ii); 54.511(d).

services ordered pursuant to a tariff do not constitute a "pre-existing contract."<sup>11</sup> Item 10 in Block 3 of the FCC Form 470 directs the applicant to check the box if it has an existing, binding contract. If an applicant checks Item 10, the SLD will not post the FCC Form 470.<sup>12</sup> Applicants with existing contracts are still required, however, to wait 28 days before filing their FCC Form 471.

5. In completing its FCC Form 470, Houghton Lake checked Item 10 in Block 3 of the Form, indicating that it had a "pre-existing contract." As a result, the SLD did not post Houghton Lake's Form 470. Based on its review of Houghton Lake's FCC Form 471, the SLD believed that Houghton Lake did not have a pre-existing contract that would have exempted it from the competitive bid requirement. SLD contacted Houghton Lake to confirm that Houghton Lake did not in fact have a "pre-existing contract." In response to this inquiry, the SLD received a facsimile, dated August 7, 1998, from Houghton Lake stating that "we do not have a contract" with our service provider.<sup>13</sup> Accordingly, by letter dated January 12 1999, the SLD denied Houghton Lake's request for discounts for telecommunications services on the ground that Houghton Lake's FCC Form 470 was not posted on SLD's website for 28 days, in violation of the Commission's competitive bid requirement.

6. Houghton Lake appealed the SLD's decision by letter dated January 20, 1999. In its appeal, Houghton Lake took issue with, among other things, the SLD's conclusion that it did not have a "pre-existing contract."<sup>14</sup> Houghton Lake claimed that it had entered into a contract with its service provider on December 29, 1997 and waited 28 days before giving its

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<sup>11</sup> FCC Form 470, "Instructions for Completing the Schools and Libraries Universal Service Description of Services Requested and Certification Form (FCC Form 470)" at 7. See also *Federal-State Joint Board on Universal Service and Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure, and Pricing End User Carrier Common Line Charge*, CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72, Fourth Order on Reconsideration in CC Docket No. 96-45 and Report and Order in CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72, 13 FCC Rcd 5318 at para. 217 (1998); *Federal-State Joint Board on Universal Service*, Tenth Order on Reconsideration, CC Docket No. 96-45, 14 FCC Rcd 5983 (1999).

<sup>12</sup> 47 C.F.R. § 54.511(c). Specifically, Item 10 on FCC Form directs the applicant to "[c]heck if applicant seeks discounts only for eligible services based on one or more **existing, binding** contract(s). . . ." See FCC Form 470, Block 3, Item 10. The instructions for Item 10 in Block 3 of FCC Form 470 state that "[i]f you are purchasing telephone service at tariffed rates and have not signed a binding contract, you cannot treat this arrangement as an existing contract." FCC Form 470, "Instructions for Completing the Schools and Libraries Universal Service Description of Services Requested and Certification Form (FCC Form 470)" at 7.

<sup>13</sup> Facsimile from Kim S. Frazho, Houghton Lake Public Library, to the Schools and Libraries Corporation, dated August 7, 1998 (August 7 Facsimile) at 1.

<sup>14</sup> Letter from Kim S. Frazho, Houghton Lake Public Library, to the Schools and Libraries Corporation, dated January 20, 1999 (January 20 Appeal Letter) at 1. We note that Houghton Lake sought to clarify in its appeal a number of errors in its application. We do not address here Houghton Lake's correction of these errors because its failure to comply with the Commission's competitive bidding rules provided sufficient justification for the SLD to deny Houghton Lake's application.

service provider the "go-ahead" on January 29, 1998.<sup>15</sup>

7. On April 30, 1999, the SLD affirmed its initial funding decision and denied Houghton Lake's appeal finding that, although Houghton Lake indicated in its FCC Form 470 that it had a pre-existing contract, Houghton Lake did not submit sufficient evidence of a "pre-existing contract."<sup>16</sup> SLD noted that neither a bid nor a verbal agreement constitute a contract.<sup>17</sup> Because Houghton Lake did not have a "pre-existing contract," the SLD denied Houghton Lake's appeal of the SLD's funding decision for failure to comply with the competitive bid requirement.

## II. DISCUSSION

8. In Houghton Lake's request for review of the SLD's decision that is now before us, Houghton Lake reiterates the arguments previously presented to the SLD.<sup>18</sup> In support of its claim that it had a pre-existing contract, Houghton Lake submits two letters. The first letter, dated January 19, 1998, from Donna J. Alward, Director, Houghton Lake Public Library, to Ms. Sara Peth, Merit Network, Inc., refers to a Request for Proposal from Merit Network, dated December 12, 1997, but specifically indicates that the "[d]etails for products and services are not yet finalized."<sup>19</sup> The second letter, dated March 3, 1998, from Ms. Alward to Ms. Peth, directs Merit Network to "go-ahead with the 128K bps direct Internet connection discussed in the January 29, 1998 proposal."<sup>20</sup> We also have on file a facsimile from Houghton Lake Public Library, dated August 7, 1998, submitted in response to an inquiry from the SLD, stating that it does not have a contract.<sup>21</sup> For the reasons set forth below, we conclude that Houghton Lake has not submitted evidence that a signed contract was in effect as of January 30, 1998, and therefore the SLD properly denied Houghton Lake's application for discounts for telecommunications services for failure to comply with the Commission's competitive bidding rules.

9. Consistent with our obligation to conduct a *de novo* review of appeals of

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<sup>15</sup> January 20 Appeal Letter at 1.

<sup>16</sup> Letter from the Schools and Libraries Division, Universal Service Administrative Company to Kim S. Frazho, Houghton Lake Public Library, "Administrator's Decision on Appeal," dated April 30, 1999.

<sup>17</sup> Administrator's Decision on Appeal at 1.

<sup>18</sup> See *supra* para. 5.

<sup>19</sup> Letter from Donna J. Alward, Director, Houghton Lake Public Library, to Ms. Sara Peth, Merit Network, Inc., dated January 29, 1998 (January 29 Letter).

<sup>20</sup> Letter from Donna J. Alward, Director, Houghton Lake Public Library, to Ms. Sara Peth, Merit Network, Inc., dated March 3, 1998 (March 3 Letter).

<sup>21</sup> August 7 Facsimile at 1.

decisions made by the Administrator,<sup>22</sup> we have reviewed Houghton Lake's FCC Form 470 and FCC Form 471. We have confirmed that Houghton Lake did check Item 10 in Block 3 of FCC Form 470 indicating that it had a "pre-existing contract." Accordingly, consistent with the Commission's rules, the SLD did not post Houghton Lake's FCC Form 470 on its website. Although Houghton Lake's Form 471 indicated the existence of a contract, the SLD determined, and we have confirmed independently, that Houghton Lake did not have a "pre-existing contract," or even a signed contract with a service provider. Houghton Lake's January 29, 1998 letter from Houghton Lake to Merit Network, in which Houghton Lake specifically indicates that "[d]etails for products and services are not yet finalized," is not evidence of a signed contract. In fact, in the letter dated March 3, 1998, Houghton Lake specifically refers to the January 29th letter as a proposal and the letter merely directs Merit Network to "go-ahead" with the 128K bps direct Internet connection discussed in the January 29, 1998 proposal. Houghton Lake submits no other evidence. Moreover, in a facsimile dated August 7, 1998, which post-dates these letters, Houghton Lake advised the SLD that "[w]e do not have a contract with Merit Network, only a letter that we sent giving them the 'go-ahead.'" Under the Commission's rules, only contracts signed by both the service provider and the applicant prior to January 30, 1998 are considered pre-existing contracts.<sup>23</sup> Even if we were to conclude that the March 3, 1998 letter was evidence of a signed contract between Houghton Lake and Merit Network as of that date, such a contract would not have met the January 30, 1998 deadline for consideration as a "pre-existing contract."

10. Accordingly, because only applicants with existing contracts, as defined in section 54.511(c)(1) of the Commission's rules, are exempt from the Commission's competitive bid requirement, we find that the SLD properly denied Houghton Lake's funding request for failure to comply with the 28-day competitive bid requirement.

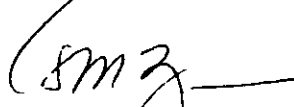
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<sup>22</sup> 47 C.F.R. § 54.723(a).

<sup>23</sup> See 47 C.F.R. §§ 54.511(c)(1)(i) and (ii); 54.511(d). Section 54.511(c) of the Commission's rules provides that contracts signed prior to July 10, 1997 would be exempt from competitive bidding for the life of the contract and contracts signed prior to January 30, 1998 would be exempt for the competitive bidding process for the first funding year. 47 C.F.R. § 54.511(c). We believe that the requirement that contracts be signed implies the need for a written contract. 47 C.F.R. § 54.511(c)(1).

11. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the appeal filed by Houghton Lake Public Library, Houghton Lake, Michigan on April 30, 1999, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, appearing to read "L M Z", followed by a horizontal line.

Lisa M. Zaina  
Acting Deputy Chief  
Common Carrier Bureau